

**Lieff
Cabrer
Heimann &
Bernstein**
Attorneys at Law

Lieff Cabraser Heimann & Bernstein, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
t 212.355.9500
f 212.355.9592

November 23, 2015

Jason L. Lichtman
Partner
jlichtman@lchb.com

VIA ECF

Honorable Raymond J. Dearie
United States District Judge
U.S. District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 112017

RE: British Airways' Request to File a Motion for Sanctions.
Dover, et al. v. British Airways, PLC (UK), No. 12-cv-5567 (E.D.N.Y.)

Your Honor:

I write in response to Defendant British Airways' November 23, 2015 letter. (*See* Dkt. 199.) BA's description of the record is misleading.

On October 1, 2015, after the deadline for expert discovery closed, Plaintiffs filed a motion to exclude Dr. Andrew Hildreth's testimony. (Dkt. 178.) On October 29, 2015, BA filed an opposition to that motion. (*See* Dkt. 187.) In support of this opposition (but in violation of the scheduling order), it attached a new expert report from Dr. Hildreth. (*See* Dkt. 182-4.)

Plaintiffs discuss the details of this expert report in their reply to BA's opposition. (*See* Dkt. 182.) Broadly speaking, Dr. Hildreth's central argument in this report—best described as a sur-sur-sur reply report—is that he performed something known as the Engle-Granger test to demonstrate that his earlier work was statically valid. (*See* Dkt. 182-3 ¶ 21.)

When Plaintiffs replied to BA's October 29 opposition, they asked the Court to ignore Dr. Hildreth's untimely report because it had been submitted in violation of the scheduling order. (*See* Dkt. 182 at 4-5.) Plaintiffs also submitted a declaration from Nobel Laureate Robert F. Engle in case the Court elected to consider Dr. Hildreth's untimely report. (*See id.* at 1.)¹ Professor Engle explained that *Dr. Hildreth had not actually performed the Engle-Granger test*, and that the test demonstrated that Dr. Hildreth's testimony was without any economic or statistical basis. (*Id.*)

The sole purpose of Professor Engle's report was to rebut the factually false premise of Dr. Hildreth's untimely report. Professor Engle will not testify at trial.

¹ Professor Engle is co-creator of the eponymous Engle-Granger test.

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Given the above facts, and as further demonstrated in Plaintiffs' reply in support of their motion to exclude Dr. Hildreth's testimony (Dkt. 182), BA does not have a good faith basis to file a motion for sanctions.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jason L. Lichtman", with a long horizontal flourish extending to the right.

Jason L. Lichtman

David S. Stellings
Nicholas Diamand
Douglas I. Cuthbertson